

## § 35.10

institution, organization, or other entity, or any person to which Federal financial assistance from DOL is extended, directly or through another recipient, but excludes the ultimate beneficiary of the assistance. Recipient includes any subrecipient to which a recipient extends or passes on Federal financial assistance, and any successor, assignee, or transferee of a recipient.

*Secretary* means the Secretary of Labor, or his or her designee.

*State* means the individual States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island and the Commonwealth of the Northern Mariana Islands.

### Subpart B—Standards for Determining Age Discrimination

#### § 35.10 Rules against age discrimination.

The rules stated in this section are subject to the exceptions contained in §§ 35.12 and 35.13.

(a) *General rule.* No person in the United States shall be, on the basis of age, excluded from participation in, denied the benefits of or subjected to discrimination under, any program or activity receiving Federal financial assistance from DOL.

(b) *Specific rules.* A recipient may not, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions that have the effect of, on the basis of age:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance from DOL; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance from DOL.

(c) *Other forms of age discrimination.* The listing of specific forms of age discrimination in paragraph (b) of this section is not exhaustive and does not imply that any other form of age discrimination is permitted.

## 29 CFR Subtitle A (7–1–04 Edition)

#### § 35.11 Definitions of the terms “normal operation” and “statutory objective.”

As used in this part, the term:

(a) *Normal operation* means the operation of a program or activity without significant changes that would impair the ability of the program or activity to meet its objectives.

(b) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

#### § 35.12 Exceptions to the rules against age discrimination: normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action otherwise prohibited by § 35.10 if the action reasonably takes age into account as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes age into account as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity if:

(a) Age is used as a measure or approximation of one or more other characteristics;

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can reasonably be measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

#### § 35.13 Exceptions to the rules against age discrimination: reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 35.10, if that action is based on a factor other than age, even though the action may have a disproportionate effect on persons of different ages. An action is based on a factor other than age only if